DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0462
Individual State Income Tax
For the Years 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Proposed Assessments of Individual Income Tax.

Authority: IC 6-8.1-5-1(a); Portillo v. Comm'r Internal Revenue, 988 F.2d 27 (5th Cir. 1993); 2002 U.S. Master Tax Guide (CCH 2001); Internal Revenue Service – Small Bus/Self-Employed.

Taxpayer argues that there is no evidence establishing he received taxable income during the years at issue.

II. Disclosure of Federal Tax Information.

Authority: IC 6-8.1-1-1; IC 6-8.1-3-1(a); I.R.C. § 6013(a); I.R.C. § 6013(c) to (o); I.R.C. § 6013(d).

Taxpayer maintains that the information, purportedly establishing that he received taxable income, was wrongly obtained from the Internal Revenue Service.

III. Exclusion of Federal Tax Information.

Authority: United States v. Janis, 428 U.S. 433 (1975); Mapp v. Ohio, 367 U.S. 643 (1961); Weeks v. United States, 232 U.S. 383 (1914); Kievela v. Dep't of Treasury, 536 N.W.2d 498 (Mich. 1995); Black's Law Dictionary (7th ed. 1999).

Taxpayer argues the information obtained from the Internal Revenue may not be used as the basis for the proposed assessments on the ground that the information is "Fruit of the Poisonous Tree."

STATEMENT OF FACTS

The Department of Revenue (Department) obtained information from the Internal Revenue Service indicating that taxpayer received taxable income during 1998, 1999, and 2000. Based on that information, the Department determined taxpayer owed state income taxes and sent taxpayer notices of "Proposed Assessment." Taxpayer disagreed with the Department's assessments and

submitted a protest to that effect. An administrative hearing was conducted, and this Letter of Findings results.

DISCUSSION

I. Proposed Assessments of Individual Income Tax.

Taxpayer states that there is no information substantiating the conclusion that he received taxable income during 1998, 1999, and 2000 and that the Department "plucked the number[s] out of thin air."

The Department received information indicating that five separate businesses – during one or more of the years at issue – had prepared and submitted nine copies of IRS Form 1099 to the federal government. The five businesses reported that taxpayer received income during 1998, 1999, and 2000. The Form 1099 "is filed by payers for each person to whom at least $10 in gross royalty payments, or $600 for rents or services in the course of a trade or business, was paid." 2002 U.S. Master Tax Guide para. 2565, p. 649 (CCH 2001). The Form 1099 is accompanied by a Form 1096 "which is similar to a cover letter" identifying the name of the filer. Internal Revenue Service – Small Bus/Self-Employed, (October 10, 2002).

Taxpayer cites to Portillo v. Comm'r Internal Revenue, 988 F.2d 27 (5th Cir. 1993), in support of his argument that the Department incorrectly assessed the additional income taxes. In that case, the court stated that, "A naked assessment without any foundation is arbitrary and erroneous." Id. at 29. An assessment of additional income taxes, resting entirely on the credibility of a single witness was a "naked assertion" and was "not sufficient support for a notice of deficiency." Id.

The Department based the notices of "Proposed Assessment" on the amount of income specified on the Form 1099s. There is nothing to indicate the information stated on the forms was incorrect. There is nothing to indicate that the calculations used in determining the amount of "State Taxable Income" were improperly or inaccurately performed. IC 6-8.1-5-1(a) states that if the Department "reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available."

Taxpayer has failed to establish that the amount of taxes listed on the notices of "Proposed Assessment" was erroneous. Taxpayer's assertion, that the Department "plucked the number[s] out of thin air," is incorrect. Unlike the "naked assessment" criticized in Portillo, the proposed assessments were not an "arbitrary and erroneous notice of deficiency" but were based on the unchallenged amounts of income specified on the Form 1099s. Portillo, 988 F.2d at 28.

FINDING

Taxpayer's protest is denied.

II. Disclosure of Federal Tax Information.

Taxpayer challenges the proposed assessments on the ground that the information contained on the federal Form 1099s should not have been provided to the Department. According to taxpayer, because the information was wrongly disclosed to the state, the proposed assessments of additional income taxes cannot stand.

I.R.C. § 6013(a) states that, "Returns and return information shall be confidential" and that no person who has access to the information "shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." However, I.R.C. § 6013(c) to (o) allows the disclosure of taxpayer information under thirteen specific circumstances. Included among those specific exceptions, is I.R.C. § 6013(d) which states that, "Returns and return information . . . shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws . . . ."

Under IC 6-8.1-3-1(a), "The department [of revenue] has the primary responsibility for the administration, collection, and enforcement of the listed taxes." The term "listed tax" is defined at IC 6-8.1-1-1 which specifically includes "the adjusted gross income tax" as one of the Indiana's "listed taxes."

Because the Department is charged with the responsibility for administering, collecting, and enforcing Indiana's adjusted gross income tax laws, it was entitled to request and obtain the information contained on the Form 1099s. Under I.R.C. § 6013(d), the Internal Revenue Service was authorized to disclose the information on those forms to the designated state representative. There is no indication that the Department acted in derogation of its "primary responsibility" as set out in IC 6-8.1-3-1(a) in obtaining the challenged information or that the Internal Revenue exceeded its mandate under I.R.C. § 6013 by releasing that information to the state.

FINDING

Taxpayer's protest is denied.

III. Exclusion of Federal Tax Information.

According to taxpayer, even if the Department had the authority to request the information contained on the Form 1099s, the information should be excluded from consideration because the information is "Fruit of the Poisonous Tree."

Taxpayer's argument is somewhat obscure. As best that can be determined, taxpayer maintains that the taxpayer's federal "IMF" (Individual Master File) contains mistaken information. Therefore, because the information reported on the Form 1099s came from the same source that encoded the information on the IMF, the Form 1099s are irretrievably tainted, and the 1099s should be excluded pursuant to the "Fruit of the Poisonous Tree" doctrine.

Taxpayer submitted one page of his federal IMF report. That one page contains information presented in cryptic form using various codes, acronyms, numbers, and enigmatic entries. The taxpayer also produced one page of the "IMF Filing Requirement Codes." According to taxpayer, reading the two documents in conjunction, reveals that the IMF page incorrectly designates taxpayer's profession.

Taxpayer seeks to preclude the Department from relying on the Form 1099s because the information contained is "Fruit of the Poisonous Tree." Taxpayer refers to the exclusionary rule that "evidence derived from an illegal search, arrest, or interrogation is inadmissible because the evidence . . . was tainted by the illegality." Black's Law Dictionary 679 (7th ed. 1999). In Weeks v. United States, 232 U.S. 383, 389 (1914), the court found that evidence seized in violation of the U.S. Const. amend. IV is not admissible in a federal criminal proceedings. In Mapp v. Ohio, 367 U.S. 643, 655 (1961), the Supreme Court held that the exclusionary rule also applies in state criminal proceedings. However, the courts have determined that the exclusionary rule does not apply in all civil proceedings. "Unless there is collusion between the agency that performed the illegal search and the agency seeking to admit the incriminating evidence, the evidence is admissible." Kievela v. Dep't of Treasury, 536 N.W.2d 498, 500 (Mich. 1995). *See also* United States v. Janis, 428 U.S. 433 (1975) (finding that the exclusionary rule did not apply to "federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer" stemming from an unpaid tax assessment).

Taxpayer's argument fails. The "Fruit of the Poisonous Tree" doctrine is inapplicable because the Form 1099s were not obtained by means of an illegal search, arrest, or seizure. Taxpayer may – or may not – have reason to question the accuracy of the information contained on the IMF, but his contention, that the Department obtained the Form 1099s in contravention of his U.S. Const. amend. IV rights, is entirely frivolous.

FINDING

Taxpayer's protest is denied.

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